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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Mark William Kelly,  
10 Plaintiff,

11 v.

12 Pima County Sheriff's Department, et al.,  
13 Defendants.  
14

No. CV-24-00001-TUC-CKJ

**ORDER**

15 This is one of two cases filed by Plaintiff involving allegations against multiple  
16 Defendants, including the Pima County Sheriff's Department, its officers, and private  
17 construction companies and their employees. In this action, Plaintiff generally alleges that  
18 he was in a public space, filming and live-streaming a Richmond Construction site, and its  
19 general contractor Desert Earth and its employees complained to the sheriff's department  
20 resulting in his removal from the public space and arrest. The action arose on January 18,  
21 2022. The other action, CV 23-68 TUC-CKJ, involved the alleged removal of Plaintiff  
22 from a public sidewalk at the construction site on July 29, 2021, and subsequent  
23 interactions between Plaintiff and several Pima County Sheriffs Department deputies.

24 On December 19, 2024, Judge Martinez recused herself from this and Plaintiff's  
25 other cases, pursuant to 28 U.S.C. § 455(a), which requires recusal "'in any proceeding in  
26 which [her] impartiality might be reasonably questioned.'" (Order (Doc. 53) at 2 (quoting  
27 28 U.S.C. § 455(a)). "This is true where there is an appearance of impropriety, whether or  
28 not such impartiality actually exists." (Order (Doc. 53) at 2.) The cases were all transferred

1 to this Court. Given the recusal, the Motion to Stay (Doc. 52) the action pending resolution  
2 of the recusal request filed in this case is moot.

3 In reviewing the record in this case, the Court notes on October 4, 2024, the  
4 Defendant, the Pima County Sheriff's Department, was dismissed as a non-jural entity.  
5 (Order (Doc. 50) at 6-9.) Likewise, the Court dismissed without prejudice Defendants  
6 Richmond Construction, Desert Earth, and their employees, *sua sponte*, because  
7 constitutional claims may only be brought against state actors. *Id.* at 10-15. The only  
8 remaining Defendants are Lumia and Marchel. The operative pleading is the Second  
9 Amended Complaint (Doc. 41), which is a noncompliant "marked-up" amended version of  
10 document 8. (Order (Doc. 50) at 1-6.)

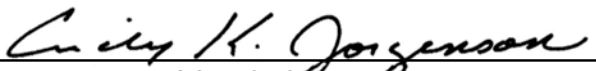
11 On May 21, 2024, the Court stayed the case as against Defendants Marchel and  
12 Lumia under the Servicemembers' Civil Relief Act, 50 U.S.C.A. §§ 3932 and 3935, and  
13 extended their responsive pleading deadline to be 21 days after December 30, 2024.  
14 Because the October 4, 2024, Order established the operative SAC as document 41, not 8,  
15 and the recusal question resulted in delay, the Court resets the time for these Defendants to  
16 file responsive pleadings to the SAC (Doc. 41).

17 **Accordingly,**

18 **IT IS ORDERED** that the pending Motion to Stay Re: Recusal (Doc. 52) is  
19 DENIED AS MOOT.

20 **IT IS FURTHER ORDERED** that Defendants Marchel and Lumia shall file  
21 responsive pleadings 21 days from the filing date of this Order.

22 Dated this 8th day of January, 2025.

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24   
25 Honorable Cindy K. Jorgenson  
26 United States District Judge  
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